

FISH HABITAT PERMIT FG 99-I(k)-15

ISSUED: September 9, 1999

EXPIRES: August 7, 2001

Mr. Luis Horta dba
Oceanview Resturant
3159 Tongass Ave.
Ketchikan, Alaska 99901

Dear Mr Horta:

Re: Placement of two concrete footings (3'x3' and 3.5'x3.5') within and the construction of an addition to an existing resturant over the banks of Hoadley Creek, Stream #101-47-10200; T.75S., R. 90E., S. 23, C.R.M.

Pursuant to AS 16.05.870(b), the Alaska Department of Fish and Game (ADF&G) has reviewed your proposal to construct an addition to the Oceanview Resturant at the referenced location. This structure will be supported by two posts set on concrete footings adjacent to the streambank of Hoadley Creek.

Hoadley Creek, Stream # 101-47-10200, has been specified as being important for the spawning, rearing, and migration of anadromous fish pursuant to AS 16.05.870(a). Your proposed concrete footings are located adjacent to essential pink salmon spawning habitat, and coho salmon spawning and rearing habitat. Fry occupy the area year round. Spawning activity begins in early August and extends into late November. Eggs deposited in the streambed may not hatch into free-swimming fish until mid-June. Any instream work resulting in siltation or disturbance to spawning redds between August 7 and June 15 would jeopardize egg to fry survival.

In accordance with AS 16.05.870(d), project approval is hereby given subject to the following stipulations:

- (1). All instream activities shall be conducted during the period of June 15 through August 7 and shall be limited to the amount necessary to bury the concrete footings and construct the building extension.

- (2). All cement products shall be confined in a manner to prevent their entry into the waters of Hoadley Creek during the time of construction.
- (3). Support posts must not contain creosote or similar wood preservatives which are not pressure injected.
- (4). Any streambank disturbances caused by construction shall be immediately stabilized to prevent erosion into the stream.

The permittee is responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved plan. For any activity that significantly deviates from the approved plan, the permittee shall notify the ADF&G and obtain written approval in the form of a permit amendment before beginning the activity. Any action taken by the permittee, or an agent of the permittee, that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of the ADF&G. Therefore, it is recommended that the ADF&G be consulted immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of AS 16.05.870. This permit must be retained on site during construction of the permitted activity. Please be advised that this approval does not relieve you of the responsibility for securing other permits, state, federal, or local.

Pursuant to 6 AAC 80.010 (b), the conditions of this permit are consistent with the Standards of the Alaska Coastal Management Program and the Ketchikan Coastal District Plan.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The ADF&G reserves the right to require mitigation measures to correct disruption to fish and game created by the project and which were a direct result of the failure to comply with this permit or any applicable law.

The recipient of this permit (the permittee) shall indemnify, save harmless, and defend the ADF&G, its agents, and its employees from any and all claims, actions or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or the permittee's performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the ADF&G's negligence.

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This permit decision may be appealed in accordance with the provisions of AS 44.62.330--44.62.630.

Thank you in advance for your cooperation. Please contact us if you have any questions.

Sincerely,

Robert G. Bosworth, Deputy Commissioner

By: Jack Gustafson
Area Habitat Biologist
Habitat and Restoration Division

cc: Bill Hanson, ADF&G, Douglas
Sargent Arlow, FWP, Ketchikan
Lorraine Marshall, DGC, Juneau
Jennings Graham, Graham Associates, Ketchikan
John Hill, KGB, Ketchikan